IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11162 of 2006
with
SPECIAL CIVIL APPLICATION No. 11473 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTKUMAR BHAGUBHAI PATEL & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR ASPI M KAPADIA for Petitioner(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR KB PUJARA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 03/08/2006

COMMON ORAL JUDGMENT

This matter was heard in the first half. The

arguments were not over., it was heard in the second half. The dictation of order was to take some time, hence it was kept at the bottom of the Board. After the other matters were over, the Court has taken up the matter for dictation of the judgement.

2. The petitioner in Special Civil Application No.11473 of 2006 too has approached this Court through her Power of Attorney Holder. She is the owner of land bearing Block No.160 of Village Popda, Taluka Choriyasi, District Surat. The petitioner in this petition has similar grievance as that of petitioner in SCA No.11162 of 2006 that in the agricultural land belonging to the petitioner one electric tower/ pylon is to be erected. The petitioner through her Power of Attorney submitted her written objections on 8th May 2006. The impugned notice (Annexure 'A' to this petition) was issued on 9th May 2006. Respondent no.2 replied to the Power of Attorney Holder of the petitioner on 9th May 2006. This Court has issued notice on 13th June 2006 and ordered that this matter be heard with Special Civil Application No.11162 of 2006.

The facts in both these petitions being identical and the grievance voiced by the petitioners in both these

petitions being similar, these petitions are dealt with and disposed of by this common judgement.

3. The petitioners have approached this Court through a common Power of Attorney holder. It is stated in para 1 of the petition that,

> “The petitioners by this petition challenge notice dated 02.05.2006 (copy at Annexure 'A' hereto) (hereinafter referred to as 'the impugned notice') for laying overhead electric supply lines, upon Shri Jagdishbhai Ramanbhai Patel who is the nephew of the petitioner no.1 and who handles the affairs of the petitioners on their behalf as the petitioners are residing abroad. .. ..”

This fact is mentioned as the Court is of the opinion that this litigation is a 'luxury litigation' and is motivated to bring pressure on the respondents to come to same terms by creating hurdle in laying down 220 KV overhead line from the point of generation of electricity to the point of distribution from where number of consumers in the licensed area of

respondent no.2-company are to be supplied the electricity.

4. The facts giving rise to the present petitions are that, 'respondent no.2 is a 'licensee' as per the provisions of section 14 of the Electricity Act, 2003 (“the said Act” for brevity) and is discharging duty of supplying of electricity to the city of Surat. It issued notice to the present petitioners dated 2nd May 2006. Though the communication is titled as notice, it was more in the nature of formal intimation of the work being undertaken in the agricultural land belonging to the petitioners. It is required to be noted that in the agricultural land belonging to the petitioners bearing block no.296 only one electric pylon (tower) is to be erected which is going to use land admeasuring 10 m. x 10 m. = 100 sq. mtrs only, that too without there being any damage, much less of permanent nature to the land, as the same can be continued to be used for the purpose of agricultural operations. This fact is evident from the photographs, produced at Annexure R-9 by respondent no.2-company with the affidavit in reply.

It is also equally important to note that the total area of agricultural land possessed by the petitioners is 40,000 sq. meters. This fact is relevant to show that the litigation is a luxury litigation and is pursued for extraneous considerations.

5. The challenge to the notice is on various grounds. The first ground which is pressed into service by the learned advocate for the petitioners is that in view of the provisions of section 67 of the Act, respondent no.2 could not have undertaken the work of laying down overhead lines and as a result thereof could not have used the agricultural land belonging to the petitioners. The learned advocate for the petitioners submitted that in view of the provisions of section 67 of the Act, a 'licensee' is entitled to carry out the work of licence subject to the terms and conditions of his licence. The case of the petitioners is that there are no terms or conditions in the licence which will authorise respondent no.2 to lay down overhead lines beyond 'the area of supply' and therefore, the

exercise of laying down overhead lines is without any authority of law.

6. In the alternative, the learned advocate for the petitioners submitted that the activity carried on by respondent no.2 falls within the ambit of section 68 of the Act, wherein it is provided:

> “provisions relating to overhead lines, such overhead lines can be laid down only with prior approval of the appropriate Government.”

According to the petitioners, respondent no.2 company has not obtained any such prior approval. Therefore, the action of respondent no.2 is without any authority of law.

7. It is also argued by the learned advocate for the petitioners that while undertaking exercise of laying down overhead lines, respondent no.2 company has not observed Rule 10 of, “the works of licensees Rules, 2006”. The submission of the learned advocate is that a duty is cast on the licensee, 'to avoid

public nuisance, environmental damage and unnecessary damage to the public and private property by any work'. The learned advocate submitted that the rule cast a further duty on the licensee that, 'the licensee shall while carrying out works ensure that such works do not cause public nuisance, environmental damage and unnecessary damage to the public or private property'. For further clarification of this submission, the learned advocate placed reliance on a map produced at Annexure 'D', wherein the proposed overhead line is shown. This line takes a turn from the pillar (electric tower/ pylon), which is to be installed in block no.296 of the petitioners. The submission of the petitioners is that if that turn is not provided then the line will be 'straight' and then installing a pillar in the agricultural land of the petitioners could have been avoided. He submitted that as respondent no.2 has not taken such trouble and hence there is breach of Rule 10.

8. The learned advocate for the petitioners also submitted that after the petitioners received notice

dated 2nd May 2006, they made a representation on 8th May 2006 and in that all these contentions were raised. In the said reply, it is mentioned that though there is a possibility to lay down the electric line, 'straight' the same is given an unnecessary turn and more expenses are incurred, harassment is caused to the petitioners. It is also stated that only with a view to favour the land owners of the surrounding lands, who would have been affected if the electric line was laid 'straight', this is done. The reply goes a step further and states that the present act of not laying down the electric line 'straight' is under pressure of some influential land owners, whose land would have been affected if the electric line was laid 'straight'. It is also mentioned in the said reply that due to laying down of this overhead line price of the agricultural land of the petitioners is reduced and the crop is also affected.

9. The learned advocate for the petitioners submitted that though this reply was responded to by respondent no.2 by communication dated 9th May 2006, none of the contentions raised in the reply were

replied and hence the petitioners are constrained to approach this Court.

The petition was filed on 29th May 2006. It was taken up for hearing during vacation. On 30th May 2006, the Court issued notice returnable on 13th June 2006. On 13th June 2006, the learned advocate for the petitioners requested the Court to issue fresh notice to respondent no.2 as respondent no.2 was not served. Now, Mr.Pujara, the learned advocate appears for respondent no.2

Respondent no.2 has filed affidavit in reply along with necessary annexures.

10. The learned advocate for respondent no.2 submitted that the petition is thoroughly misconceived, besides, it does not set out the full facts. He submitted that if the petitioners had placed full facts on record, the Court would not have entertained the petition and even notice would not have been issued. The learned advocate invited attention of the Court to para 2.1 of the affidavit in reply. It is reproduced to show that the petition is deliberately silent on material points and is

keeping back certain facts.

> “2.1 The respondent no.2 is supplying electricity in the area of 52 sq. KMs in the city of Surat. The respondent no.2 is presently drawing its power requirement from Gujarat Urja Vikas Nigam Limited (Erstwhile GEB) for the last few decades. The Government of Gujarat has lastly extended the sanction of respondent no.2 under section 28 of the Indian Electricity Act, 1910 upto 11.4.2028, imposing as one of the conditions that the respondent no.2, to set up its own generating capacity. The respondent no.2 is a deemed licensee under the provisions of the Electricity Act, 2003 and the Gujarat Electricity Industry (Reorganisation & Regulation) Act, 2003. The State Government approved the proposal to set up a 1100 MW power project at Akhakhol close to license area of the respondent no.2 on 19.11.2003 through the Special Purpose Vehicle, Torrent Power Generation Limited

(TPGL) wherein the respondent no.2. Is a 40% stakeholder. This is a Mega Power Project."

11. It is in light of that the overhead line in question is required to be laid down between generation station at Akhakhol and the receiving station, situated on the southern, northern and between the fringes of the licensed area.

12. The learned advocate for respondent no.2 submitted that once this project came into existence, respondent no.2 company assigned the job of laying down overhead lines to the erstwhile GEB, a body having expertise in the field having vast network of distribution of electricity in the State of Gujarat. The experts on the subject carried out a feasibility survey for 220 KV line. The GEB carried out physical survey and submitted route profile and pole (electric tower/ pylon) schedule. The scheme envisaged erecting of about 450 towers for 134 KM overhead lines. Every tower is to use only about 100 sq. mtrs of land which is not to go waste as can be utilised for agricultural operations after the tower is erected.

The learned advocate for respondent no.2 submitted that in fact soonafter the aforesaid exercise was undertaken by the expert (GEB), respondent no.2 issued two public notices, one in Gujarati and another in English, in daily newspapers on 27th August 2005. Respondent no.2 company invited objections from the persons, who may be aggrieved by the said project, within two months from the date of publication of the said notices. The learned advocate submitted that as a matter of fact which requires a special note to be taken that the company did not receive any objection from any person, including the petitioners. The learned advocate submitted that though respondent no.2 company is not required under the law to issue any notice like the one which is issued to the petitioners on 2nd May 2006. It was only out of courtesy that the land owner may not be taken by surprise, that the notices were issued to every individual when the work of erecting electric poles/ towers was undertaken.

13. The learned advocate for respondent no.2 submitted that the 'bona fides' of the petitioners

are not clear which is demonstrated from the fact that after the notice dated 2nd May 2006 was served to him he wrote to the General Manager (Projects) of respondent no.2 on 8th May 2006. The learned advocate submitted that immediately on the next day, i.e. 9th May 2006 the company wrote back to the Power of Attorney holder of the petitioners and gave material details and the facts which would have satisfied any person, who had clear bona fides.

It was informed by communication dated 9th May 2006 that on 27th August 2005 the company had issued public notice in Gujarati daily, 'Gujarat Mitra' and English daily, 'Indian Express', that respondent no.2-company has obtained necessary permission/ sanction from the Energy & Petrochemical Department of Government of Gujarat under the relevant provisions of the Act, and relevant provisions under the Indian Telegraph Act, 1885, that any block nos. affected by an act of respondent no.2-company and suffer any loss of the standing crop will be compensated.

The learned advocate for respondent no.2 submitted

that besides the petitioners were requested that in case you want any further information, you please contact the office of the company in person. At the end a request was made that in a matter of public importance of supply of electricity, please extend your cooperation.

14. The learned advocate for the respondent no.2 submitted that instead of approaching respondent no.2 company, the petitioners approached this Hon'ble Court by filing this petition. The learned advocate for the respondent no.2 submitted that this communication dated 9th May 2006 is so projected by the petitioners as if details which were called for are not supplied and some vague reply is given. He submitted that if at all the petitioners wanted any further details respondent no.2 could have been contacted and if the same were denied then there would have been some justification to approach this Court.

15. The learned advocate for respondent no.2 invited attention of the Court to a map/ diagram produced at Annexure R-1, wherein from TPGL 200 KV D/C

(Duplicate Circuit) line is shown. The diagram shows that the said 220 KV line from TPGL to Ved Substation is almost in a straight line. Whereas, 200 KV overhead line from TPGL to 'Puna' Substation is in a circuitous route and 220 KV overhead line from TPGL to 'Bhatar' Substation is in a longer circuitous route. The learned advocate for the respondent no.2 submitted that this route is not decided at the sweet ill of his client and in any case not to cause any harassment to the petitioners or any individual. He submitted that if the company (respondent no.2) had any control, it would have laid the aforesaid overhead line on the shortest route, i.e. 'crow fly distance'. He submitted that the crow fly distance would not have been 135 KM, but would have been of shorter length. He submitted that proportionately the cost also would have been lesser than the cost which is required to be incurred by his client.

16. The learned advocate for respondent no.2 next invited attention of the Court to Annexure R-2, i.e. Resolution of Energy & Petrochemical Department, Government of Government of Gujarat bearing GR

No.SEC-11-2004-5331-K dated 28th June 2005. The learned advocate read the said Resolution at extenso, to bring home the point that it was only after appreciating the need for issuing the Resolution after bearing all relevant provisions in mind the Resolution was issued. It will be appropriate to reproduce the relevant part thereof.

> "The Surat Electricity Company Limited (now Torrent Power SEC Ltd. (TPSECL) is a deemed licensee for distribution of electricity in its licensed area of 52 Sq. KMs in the city of Surat.
>
> On 4.6.2002 State Government had approved its generation project of 675 MW capacity and thereafter on 19.11.2003 with the enhanced capacity of 1050 MW at Akhakhol, Tal. Kamrej, Dist. Surat. Accordingly, TPSECL formed a Special Purpose Vehicle (SPV) named Torrent Power Generation Co. Ltd. (TPGL) in November 2003. TPSECL had proposed vide letter dated 13.8.2004 to grant approval to install 220 KV overhead

lines outside its area of supply u/s 67 and 68 of the Electricity Act, 2003 to bring power from TPGL to its three receiving stations located at southern, northern and eastern fringes of the licensed area for its further distribution. For the purpose, it is proposed to install 220 KV overhead lines of nearly 134 KMs passing through agricultural lands of various villages, crossing over the National and State Highways, Railway Liens, SUDA area, etc. TPSECL has also requested to confer upon all relevant powers of Telegraph Authority u/s 164 of the said Act for this purpose.” (emphasis supplied)

Then follows Resolution. The beginning part of the Resolution reads as follows :

“After careful consideration, the Government is pleased to accord an approval u/s 68 of the Electricity Act, 2003 subject to the following terms and conditions to the Torrent Power SEC

Ltd. for its installing the 220 KV overhead lines from the power plant of TPGL to three Receiving Stations located at southern, northern and eastern fringes within the incensed area for distributing electricity to its consumers using its existing network.

(a) .. ..

(b) With reference to section 67(2) of Electricity Act, 2003, TPSECL would be required to follow the rules made under the regulations wherever prescribed by the State Government. Before that, Company has to comply the provisions of section 12 to 18 of the IE Act, 1910 and IE Rules, 1956 till the new rules are framed.

(c), (d), (e) .. ..

2. The State Government is also pleased to empower TPSECL u/s 164 of the Electricity Act, 2003 with the powers which the Telegraph Authority possesses under the Indian Telegraph Act, 1885 to place the above lines for transmission of electricity.”

17. The learned advocate invited attention to yet another important document which is produced at Annexure R-3. It is dated 28th November 2005. It is approval granted by the Chief Electrical Inspector. The subject of the letter reads as under:

> "Approval to the drawings for method of construction of 220 KV Double Circuit line form TPGL-Akhakhola Village to Bhatar, Puna and Ved area of Surat City."

The accompanying papers are showing details of electric pole/ tower.

18. The learned advocate for respondent no.2 then invited attention to Annexure R-8, a caveat application filed by respondent no.2-company in the Court of the learned Principal Civil Judge (SD), Surat. The learned advocate submitted that in that caveat application all details, which were sent to the petitioners in reply dated 9th May 2006 were incorporated. The learned advocate submitted that the 'caveat' is returned with an endorsement that, 'as

the owner is not found, on inquiry it is returned to the sender'. The learned advocate for respondent no.2 submitted that this happened on 6th May 2006, whereas respondent no.2-company was served with objections to this notice dated 2nd May 2006 on 8th May 2006. If the present Power of Attorney holder had instructions to file objections to notice dated 2nd May 2006, the owner should have given instructions to him to receive the copy of the 'caveat' also. It is clear from these facts that for extraneous reasons and to fulfil ill design, the 'caveat' application is not accepted, and the knowledge of filing of caveat is used to file a petition before this Court.

19. The learned advocate for respondent no.2 submitted that this shows the conduct of the petitioners. On 8th May 2006 the Power of Attorney filed objections to the notice issued by his client, but just two days before, on 6th May 2006 the caveat application is returned with an endorsement, 'as the owner is not found on inquiry it is returned to the sender'.

20. The learned advocate for respondent no.2 submitted that section 51 of the Indian Electricity Act, 1910 confers powers of 'telegraph authority' on a 'licensee'. The learned advocate submitted that, that being so, it is within the powers of the State Government to confer powers of the 'telegraph authority' for placing of electric supply lines, appliance and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works by order in writing. Not only on a 'licensee' but even on any 'public officer', 'licensee' or 'any other person' engaged in the business of supplying energy to the public under this Act. He submitted that it is true that it is open to the State Government to impose such conditions and restrictions which it may think fit to impose. The learned advocate submitted that the State Government can confer any of the powers which the 'telegraph authority' possesses under that Act with respect to placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained. He

submitted that section 51 expands the powers of the 'licensee' at par with the powers which the telegraph authority possesses under the Telegraph Act with respect of placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained. The learned advocate submitted that the Hon'ble High Court of Kerala in the matter of **Nagaraju Vs. Mahalingappa**, was pleased to hold that, 'it is open to the Kerala Electricity Board to enter upon the lands of private citizens for the purpose of placing of electric supply lines, appliances and apparatus for transmission of energy without consent of the owners of such lands (emphasis supplied). The learned advocate submitted that section 18 of the Indian Electricity Act, 1910 was with regard to 'overhead lines', and the restrictions/ limitations, if any of this section stood removed by section 51, as it starts with 'non obstante' clause. Section 51 reads as under:

> "Notwithstanding anything in Secs.12 to 16 (both inclusive) and Secs.18 and 19, the State Government may, by order in

writing, ...”

21. The learned advocate submitted that sections 12 to 16 relate to 'works'. Section 18 deals with 'overhead lines' and section 19 deals with 'compensation for damage'.

The learned advocate for respondent no.2 submitted that in new Act (Electricity Act, 2003) section 164 provides for 'exercise of power of telegraphic authority in certain cases'. The learned advocate submitted that section 164 is equivalent to section 51 of the Indian Electricity Act, 1910. The learned advocate submitted that section 67 of the Act is not applicable to the facts of the present case. Section 68 of the new Act is more or less akin to section 18 of the Indian Electricity Act, 1910. He submitted that the net effect of all these provisions is that respondent no.2 has all the powers that of the 'telegraph authority', conferred on it under the Indian Telegraph Act, 1885. Section 10 of the Indian Telegraph Act, 1885 empowers the 'telegraph authority' to place and maintain telegraph lines and

posts. These powers are conferred by the State Government on respondent no.2 under section 51 of the old Act, which is equivalent to section 164 of the new Act. The learned advocate for respondent no.2 made available a copy of order dated 8th April 1968 bearing No.GU-28-ESA-3267/ 2232/K. By this order, the licence granted to the Surat Electricity Company Limited, was revoked with effect from 12th April 1968. The learned advocate for respondent no.2 also made available a copy of the Notification dated 8th April 1968 bearing No.GU-29-LSX-3267/2232-K, relevant part of which reads as under:

> "In exercise of the powers conferred by subsection (1) of section 28 of the Indian Electricity Act, 1910 (IX of 1910) (hereinafter referred to as "the said Act") the Government of Gujarat, after consulting the State Electricity Board and with the consent of Surat Municipal Corporation, Surat District Panchayat and other Local Authorities as shown in the Statement attached hereto, hereby grants sanction to

the Surat Electricity Company Ltd., ...”

22. The learned advocate for respondent no.2 relied upon a decision of this Court in the matter of **Jiviben Motibhai Patel Vs. Executive Engineer (C&M), Gujarat Electricity Board, Baroda & another,** reported in 1996(1) GLR 470. The learned advocate submitted that this Court has held that placing, maintaining poles, wires, etc on or under private property can be done without the consent of owner/ occupier, when provision is made in this behalf in the sanctioned scheme prepared under sec.28 of the Electricity (Supply) Act. This Court also held that when notification under section 51 of the Act, conferring on the Board-licensee some of the powers under the Telegraph Act, the Board-licensee becomes empowered to lay down pole, instal electric line, etc. without the consent of the owner/ occupier of the property. He submitted that the Court was also pleased to observe that in case if there is any resistance or obstruction by the owner/ occupier, the Board-licensee would be required to approach the

District Magistrate for permission. The learned advocate for respondent no.2 relied upon paras 25 and 28 of the judgement, which read as under:

> “25. It becomes very clear from the provisions of Secs.10 to 19 of the Indian Telegraph Act coupled with provisions of Sec.51 of the Indian Electricity Act that the Board was not required to obtain consent of the petitioner for doing the impugned work or for any works as defined in Sec.2(n). It is also not obligatory on the part of the competent authority which has been conferred powers of the Indian Telegraph Act under Sec.10 of the said Act, to issue prior notice to the owner of the property over which electric supply line is proposed and before exercising powers under sec.10. In view of the conjoint reading of the provisions of sec.51 of the Electricity Act and Sec.10 of the Indian Telegraph Act, for exercise of powers in laying down poles and construction of electric line, consent

or prior intimation was not necessary. The only right to the owner or the occupier, as the case may be, is to claim compensation. Compensation has already been awarded by the Additional District Magistrate. Therefore, the act of placing poles and laying over-head electric line in the field of the petitioner cannot be said to be unauthorised in the absence of prior permission of the District Magistrate."

"28. Now, relevant section is Sec.16 of the Indian Telegraph Act. The exercise of powers under Sec.10 is not conditional on compliance of provisions of Sec.16(1). The powers given under Sec.10 are, as such, absolute. It is only when there is obstruction or resistance in exercise of powers, then in that event, the authority is obliged to approach the District Magistrate. In absence of any resistance or obstruction, it would not be necessary at all for the authority to approach the

District Magistrate. In the present case, no objection or resistance was made until the poles were installed. Therefore, there was no necessity to obtain order of the District Magistrate under sec.16(1) of the Indian Telegraph Act. Therefore, on that ground also, the second contention is also not sustainable."

23. The learned advocate for respondent no.2 invited attention of the Court to the relevant part of the notification dated 8th April 1968, Clauses 7 & 9 read as under:

"7. The Sanction Holder is hereby authorised to cross the river and creeks mentioned in the second Anenxure at such points or places as shall have been previously approved by the Government of Gujarat."

"9 For the placing of electric supply lines, appliance and apparatus for the transmission of energy or for the purpose of

> telephonic or telegraphic communications necessary for the proper coordination of works, the Sanction Holder shall be entitled subject to the provisions of the Indian Telegraph Act, 1885, to have all the powers which the Telegraph Authority possesses under Part III of the Indian Telegraph Act, 1885 with regard to a telegraph established or maintained by Government or to be so established or maintained."

The learned advocate for respondent no.2 also relied upon a decision of Karnataka High Court in the matter of **S.M. Rao and others Vs. State of Karnataka,** reported in A.I.R. 1999 Karnataka 475. The learned advocate relied upon para 17 and 20, which read as under:

> "17. The next contention is that Section 28 notification has not been duly published. As said earlier it is not an acquisition proceeding. The electrical line is being drawn for the supply of power to the

consumers. It is sufficient to inform the public indicating the village through which the line is being drawn. As a matter of fact, the definite area on which the Tower, etc., are to be placed can be known only after a spot inspection is made and viability is worked out. But I should certainly hasten to add, that if the Sy. Nos., in the village are also indicated, that will make the notification more precise. Such details will also inform the affected person to arrange his affairs. But, absence of these details are not fatal. When the line has to travel a long distance as in this case, non mention of the Sy. Nos., is not certainly fatal. Many a time drawing of the line depends on the soil condition and other local situation as well. If that be so, they cannot in advance contemplate as to through which property the line will have to be drawn. They need only say as to the village through which the line is being drawn. That has been complied in

this case, and as such there is substantial compliance of the statute."

"20. The other contention urged, namely, that consent of the owners of the land through which the line travel was not secured by respondents 4 and 5 before laying the poles and towers to draw the electric line recedes to background, when we remember that the line is being drawn in exercise of the powers conferred, under the section 51 of the Electricity Act read with Sections 10 and 16 of the Telegraph Act. If there is an order in this behalf, then no consent is called for."

24. The learned advocate for respondent no.2 also relied upon a decision of Madras High Court in the matter of **E. Venkatesan and others Vs. Chairman, Tamil Nadu Electricity Board, Madras and others,** reported in A.I.R. 1997 Madras 64. The learned advocate submitted that it is held by the Madras High Court that,

> ".. .. Once the power under the Telegraph Act is given to the public officers of the Board, they are also entitled to dig pits and also instal towers over the property. The question of consent from the petitioners does not arise for consideration, nor is it required under law."

25. This Court finds that the present are the petitions filed with an oblique motive and for extraneous considerations. In view of the aforesaid discussion, the Court finds that the petitions have no substance and the same are dismissed. Notice is discharged. The Court restrains itself from passing an order of dismissing the petition with cost only because it is not on record that the petitioners were aware of the act/s of the enthusiastic Power of Attorney Holder of the petitioners. Though under the law a person who is giving Power of Attorney is responsible for all the acts of the Power of Attorney Holder, done by him on behalf of the person, who gave him the Power of Attorney, therefore, the Court is of the opinion that let the petitioners be not burdened

with cost.

(RAVI R. TRIPATHI, J.)

karim